

A SHORT  
TRACT  
CONCERNING THE  
DOCTRINE

OF  
“ Nullum Tempus occur-  
rit Regi; ”

SHEWING

*K. Sharp (G.)*

The particular Cases to which it  
is applicable ;

AND

That it cannot, according to LAW,  
be effectual

FOR THE

Recovery of Manors, Lands, or  
Tenements,

Alienated from the Crown.

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LONDON:  
PRINTED IN THE YEAR M.DCC.LXXIX.

A REPORT

T. K. A. C.

concerning the

DOCTRINE

of the Temple

of the Temple

showing

the history of the Temple

from the beginning

to the present

and the future

of the Temple

of the Temple

of the Temple

of the Temple

of the Temple

of the Temple

of the Temple

of the Temple

*Extract of a Letter from the Author of the following Tract to —, dated the 6th of May, 1771, which is prefixed to the MS. Copy of the Tract in the Hands of the Editor.*

“ As I  
 “ have lately heard that it is now dis-  
 “ puted, whether or not” you “ ought to  
 “ be excluded from the benefit of the  
 “ late *Nullum tempus act* for quieting the  
 “ possessions of the subject, I have taken the  
 “ liberty to inclose, for your — perusal,  
 “ a short tract on the general doctrine of  
 “ *Nullum tempus occurrit regi*. How far  
 “ the same may be applicable to the point  
 “ in contest between” you “ and the trea-  
 “ fury-



“ jury-board, I cannot pretend to judge,  
 “ because my information concerning  
 “ that affair arises merely from common  
 “ report, so that, of course, I must pro-  
 “ fess myself a stranger to the particular  
 “ circumstances of the case. Neverthe-  
 “ less, as I happened, in the course of  
 “ my reading the other day, to light up-  
 “ on a passage in Bracton, which, to  
 “ me, seemed capable of affording a clear  
 “ explanation of the *Nullum tempus doc-*  
 “ *trine*, I thought it a duty incumbent  
 “ on me, to send” you “ my thoughts  
 “ upon it. It may indeed be said that  
 “ Bracton is in the hands of every law-  
 “ yer, and that I ought to have known  
 “ that the learned gentlemen of the law,  
 “ employed by” you, “ are already ap-  
 “ prized of the passage to which I refer,  
 “ as they must certainly, at some time  
 “ or other, have read it; nevertheless,  
 “ there is sufficient reason for me to pre-  
 “ *sume*



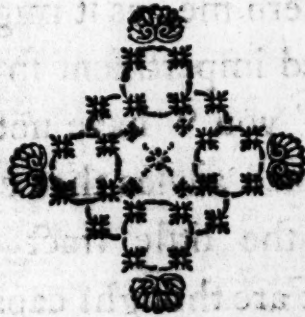
“ *sume* that they have entirely overlooked  
 “ or forgot it in the present case; and that  
 “ even the whole legislature have also  
 “ either forgot it; or else are entirely ig-  
 “ norant of it, because the late act of  
 “ parliament (which was made expressly  
 “ to guard against the *mistaken doctrine*  
 “ of *Nullum tempus*) must otherwise ap-  
 “ pear absurd and superfluous.

“ “I think it necessary to presume thus  
 “ much, ———, by way of excuse for  
 “ having presumed to write to” you  
 “ about business which does not in the  
 “ least concern me, as it might otherwise  
 “ be deemed impertinent in me, to sup-  
 “ pose that” you “ have not already the  
 “ most learned advice that can be procu-  
 “ red. If the little tract contains any  
 “ hints that are thought capable of being  
 “ enforced to your — advantage, it will  
 “ give me real pleasure; for indeed I have  
 “ no greater happiness than that of being  
 “ serviceable

"serviceable (when it lies in my power)  
"to any man whatever, whether friend  
"or stranger."

(Signed)

"GRANVILLE SHARP."



PREFACE.



## P R E F A C E.

**W**HEN an author pretends to write a treatise on any particular subject, he ought to have leisure sufficient to examine and thoroughly consider every thing that has an intimate connexion with it; but, as the Writer of this has no such leisure, it is necessary for him to declare that he professes no other knowledge of the subject, in question, than what has occurred to him occasionally in consulting the law-books on other points; and, therefore,



fore, he offers this little Tract to his readers, not as a complete and regular system, but rather as a ground-work for future enquiries upon the subject, by Writers who are blessed with more leisure and abilities for such researches than himself; and who may, perhaps, be hereby induced either to build upon the same foundation, or to establish a better in its room.

A SHORT

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A SHORT  
**T R A C T**  
CONCERNING THE  
Doctrine of "*Nullum Tempus*  
"*occurrit Regi,*" &c.

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P A R T I.

**T**HE doctrine of "*Nullum Tempus*  
"*occurrit Regi,*" if admitted in  
an unlimited and general sense,  
is capable of being wrested to the most  
arbitrary purposes, and may seem to au-  
thorize the most dangerous and oppres-  
sive pretensions and claims on the pro-  
perty of the subject.

As a general doctrine, therefore, it is  
unreasonable; and, consequently, incon-  
sistent with the fundamental principles

of the *common law*; for which reason I never could esteem the *Nullum Tempus* doctrine as a *maxim* of the common law; and I have since found that my opinion of it was in some degree right, and that the doctrine is so far from being a *general maxim*, that it ought never to be mentioned without its peculiar *exceptions*, lest it should do injury, by being applied to improper cases, and be mistaken for a *maxim*, to the perversion of justice: for the true and proper *maxims* of the common law demand the utmost deference when they are cited, their authority being unquestionable; because "*Contra negantem principia (vel maxima) non est disputandum.*" (Co. Lit. 343. Doctor & Student, Ec. c. 8. p. 27.)

This maxim may indeed seem applicable to myself, for denying that the authority and weight of a *maxim* is due to the doctrine of *Nullum Tempus*, &c. But I hope to be able, in the course of  
this



this work, to obviate any such imputation, and to prove *that it really is not a general maxim.* In order to set this point in a clear light, it will be necessary first of all to take a short view of those particular *rights of the crown*, which, *in law*, are justly esteemed *unalienable*, and which I apprehend to be as follows.

The king is invested, by his office, with a kind of *limited property* in the persons of all his *free subjects*, by which he is enabled, and, indeed, bound in duty to claim, and *free* them whenever their persons are unlawfully seized, imprisoned, or otherwise detained at home or abroad, under pretence of right of service, whereby their *persons* are claimed as *private property*, acquired by purchase, custom, or any other mode of acquisition \* whatsoever. For no claims of this

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kind,

\* Query. How far may this hold good since the making of the Habeas Corpus act, which supposes that a man may be transported against his will if he has signed

kind, upon a *freeman*, are to be favoured in law, or can possibly be accounted valid, because the maxim assures us that "*Liber homo*" is "*res quasi sacra*," "*which may not be sold*:"† so that there can be no just claim of property in the person of a *freeman*, except the official right and claim of property vested in the king; and, as this is limited by the laws for the benefit and freedom of the subject, it is, for that very reason, *unalienable from the crown*.

#### Other

ed a written contract? Sect. 13. This section, however, gives no authority for such a forcible transportation; it only informs us, that the act does not "*extend to give benefit*" in such case; but the common law, we may presume, will or ought to "*give benefit*" in this, as in every other case, of violence and wrong, because "*Lex semper dabit remedium*:" and I have already shewn that the right of the Crown is *unalienable* in this kind of property, for the maintainance of freedom.

† "*Item quasi res sacra ut liber homo qui vendi non potest, cum libertas non recipiat æstimationem*," &c. Bracton, lib. 2, p. 14.

Other *unalienable rights of the Crown* are those which form the public revenue, and belong to the king's exchequer, all which are included by this author in the term "*Res fiscalis*,"\* and which he also esteems "*res quasi sacra*."†

There are also several other rights, which are inherent in the Crown, *for the public good*, and cannot therefore be disposed of, or alienated, viz. such as *Peace, Justice, &c.* — "*et quæ faciunt ipsam coronam, et communem utilitatem respiciunt, sicut est Pax et Justitia, &c.*"

To all such things we may safely apply the doctrine of "*Nullum tempus occurrit regi*." — The same is likewise applicable to a few other things, even of an inferior or second class; I mean such as  
are

\* "*Et est res quasi sacra, Res fiscalis, quæ dari non potest, nec vendi, nec ad alium transferri a principe vel a rege regnante——*"

† To this rule, about *Res fiscalis*, there are some necessary exceptions which will hereafter be mentioned.



are nevertheless so far *alienable*, that they may lawfully, without damage to the king or his subjects, be transferred, *for a time*, to other persons. — “Sunt et aliæ res quæ  
 “pertinent ad coronam propter privile-  
 “gium regis, et ita communem non re-  
 “spiciunt utilitatem, quin dari possunt  
 “et ad alium transferri, quia, si transfe-  
 “rantur, translatio nulli erit damnosa,  
 “nec ipsi regi sive principi, &c.” — The things, ranked in this class of *Royal Property*, are, *sea-wrecks, treasures found, great fish, as whales, sturgeons, and other royal fish*. And whosoever pretends to have a right to enjoy the profits arising from these particular things, must be able to produce a special *warrant* for that purpose; because *prescription*, even of a very long time, is not sufficient to justify the pretension: “*Diuturnitas enim tem-*  
 “*poris, in hoc casu, injuriam non minuit,*  
 “*sed auget, nec in primo casu, NEC IN ISTO,*  
 “*CURRIT TEMPUS CONTRA REGEM,*  
 “*nec*

“ nec incumbit ei probatio quia ad ip-  
 “ sum pertineant, cum constare debeat  
 “ singulis, quod hujusmodi de jure gen-  
 “ tium pertineant ad coronam.”

But, with respect to things of a third class, as *crown-manors, lands, tenements, &c.* the case is widely different, for the doctrine of *Nullum tempus, &c.* affects them not at all! And I am astonished that so many gentlemen, learned in the law, whose attention has lately been employed upon this point, should have thought it necessary to provide, by a special act of parliament, against this doctrine, when *the common law of England*, that ought always to be preferred, \* has already sufficiently guarded us against the tyrannical construction of the phrase, which, like a mere bug-bear, is formidable only whilst misunderstood, though it has raised an epidemical panic, of which  
 the

\* “ When common law and statute law concur, the  
 “ common law shall be preferred.” 4. Co. 71.

the late act is a proof. — “ Sunt etiam  
 “ *aliæ res quæ pertinent ad coronam,*  
 “ *quæ non sunt ita sacræ, quin transfer-*  
 “ *ri possunt, sicut sunt, FUNDI, TERRÆ,*  
 “ *et TENEMENTA, et HUIJUSMODI per*  
 “ *quos corona regis roboratur, et in qui-*  
 “ *bus CURRIT TEMPUS CONTRA RE-*  
 “ *GEM, sicut contra quamlibet privatam*  
 “ *personam.*”

Thus we are assured, by the authority of an ancient and unexceptionable writer, that *crown-lands* are exactly upon *the same footing* as *private freeholds*, with respect to *time* or *prescription*, which is the very reverse of the *Nullum tempus* doctrine, lately adopted by the Treasury.

Now, it is a maxim in law, that a quiet and uninterrupted *possession* for sixty years creates a proper title. “ *Possessio*  
 “ *pacifica* POUR ANNS 60 *facit jus.*” (Prin. Leg. et Æq. p. 81. See also Jenk. cent. 26.) And, therefore, as we have before shewn, that *Crown manors, lands,*  
 and



and *tenements*, are exactly upon the same footing with respect to *time* or prescription as *private freeholds*, we must necessarily conclude that the king entirely loses his title to alienated lands, if there are better proofs of such a *peaceable possession*, on the one side, than of a *continued claim* on the other; in which case the lands must become wholly and entirely the property of the possessor. And, even when *alienated crown lands* are claimed within any shorter term than sixty years, the king may not *seize*, for it is a maxim, " That " the king can disseize no man, nor be " disseized;" (Doctor & Student);\* and, even though the king cannot be disseized, yet this is not to be construed so as to annul that interest, which private persons acquire, *by time*, in the possession of alie-

C

nated

\* " Item pro maximo habetur in legibus Angliæ, " quod nullus potest dominum regem disseisire, NEC DOMI- " NUS REX ALIQUEM DISSEISIRE POTERIT, ita quod " liberum tenementum per talem disseisinam transfere- " tur de rege ad alium, NEC E CONTRA." Chap. 8.

nated lands, for that is sufficiently established by an act of 1 Edw. III. c. 12. which ordains, with respect to "*lands*" "*and tenements holden of the king in chief,*" "*and ALIENED WITHOUT LICENCE*"—that the "*king shall NOT HOLD THEM*" "*AS FORFEIT in such case, but*"—"there shall be a reasonable fine taken in Chancery by DUE PROCESS." Here is no limited time for possession, so that the act is as efficacious for those who have been *in possession only 3 years*, as for those who have held *20 times 3 years* as above. See also 9 Edw. III. c. 2. 21 Jac. c. 25. 8. Hen. VI. c. 9. § 7. and 31 Eliz. c. 11.

By the two last mentioned acts a peaceable and quiet possession *for 3 years* creates a right that will justify "*keeping possession WITH FORCE :*" but as the king is not expressly named, I conceive that so short a time doth not bar his title to any *reasonable fines*, not prohibited by 12 Char. II.

c. 24. \* because it is a maxim that “ *the king is not bound by statute law, unless expressly named.*”

What hath hitherto been advanced, I hope, will be thought sufficient to establish the *absolute property* of all persons, who shall be able to prove a *peaceable possession of alienated crown-lands, unclaimed for 60 years*, and also that those persons who have held *alienated crown-lands for more than three years unclaimed*, have a right to continue in possession, on paying a *reasonable fine*; and consequently that the doctrine of *Nullum tempus, &c.* is by no means *effectual* for the recovery of *manors, lands, or tenements, alienated from the crown.* And I trust that my candid

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readers

\* See sect. 1, 5, and 6, particularly the latter. —  
 “ Provided always and be it enacted, that any thing  
 “ hercin contained shall not take away, nor be construed to take away, any *finer for alienation*, due by  
 “ particular customs of particular manors and places,  
 “ other than fines for alienations of lands or tenements  
 “ holden immediately of the king in *capite.*”

readers will acknowledge and hold fast  
this my opinion, until they see *more au-*  
*thentic vouchers* produced in support of  
the contrary doctrine.

(Signed)

GRANVILLE SHARP.



PART



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P A R T II.

Concerning some Precautions and  
Conditions necessary to be ob-  
served in the granting of Crown  
Lands, Tenements, &c.

THE crown is limited, as well in the mode of *granting*, as in the conditions to *be granted*; insomuch that when any grant or lease is made *contrary to the rules prescribed by law*, the same is thereby rendered *null and void*. I shall not pretend to speak of all the particular precautions and conditions necessary to be observed on these occasions, but only some few of the most essential, which, I apprehend, have not been so much regarded *of late* as they ought.

The

The legislature hath agreed, and laid it down as a rule, that all the ancient and military tenures of lands, and “ even  
 “ SOCCAGE IN CAPITE, of the king, and  
 “ the consequents upon the same, have been  
 “ much more burthensome, grievous, and  
 “ PREJUDICIAL, to the kingdom, than they  
 “ have been BENEFICIAL to the king.”

(See Preamble to 12 Cha. II. cap. 24.)

For this just reason, founded on experience, the king hath ever since been restrained by the law from granting any part of his dominions upon such conditions.

I have, indeed, heard of a foreign island being granted to a noble lord upon some such antiquated conditions, whereby he is said to be established as *lord paramount*, with a peculiar unconstitutional authority; but this, I am willing to presume, is merely report; and, even if it were true, the grant would be innocent enough, because it is *null and void in itself*, as the king has had no right since

12 Cha. II. to make a grant on any other tenure than that of free and common socage. \* — The king is also bound to have respect to former grants, because, even in cases when the king hath granted during pleasure, a second grant, not mentioning the former, shall be void. (3 Hen. VIII. c. 15).

Now, in order to set forth more clearly some other circumstances wherein the crown is limited in the mode of granting, and in the conditions to be granted, I shall beg leave to suppose a case. — Suppose a crafty and litigious person makes interest with the lord-treasurer, or  
the

\* Sect. 4. " And be it farther enacted, &c. That all  
" tenures hereafter to be created by the king's ma-  
" jesty, his heirs, or successors, upon any gifts or grants  
" of any manors, lands, tenements, or hereditaments,  
" of any estate of inheritance, at the common law,  
" shall be in *free and common socage*, and shall be ad-  
" judged to be in *free and common socage only*, and not by  
" knights service, or in capite, and shall be discharged  
" of all wardship, &c. any law, statute, or reser-  
" vation to the contrary thereof in any wise notwith-  
" standing."

*the commissioners of the treasury, for a grant of alienated crown-lands, on condition that he shall, at his own expence, prove and establish the right of the crown, and recover the lands from the present possessor.*

Let us also *suppose* a lord-treasurer, or commissioners of the treasury, *so regardless of the necessary and legal precautions against abuses in granting crown-lands*, that they approve the clandestine offer, and procure a grant from their royal master agreeable to the wishes of the proposer.

But what will such an adventurer gain by his parchments, whilst the king's courts are worthy to be esteemed *courts of justice and law*? Be pleased to observe that my *suppositions* are now at a stand. They extend no farther than the *imaginary case* already laid down. For I am not to *suppose*, or *conceive*, that any learned persons, who preside in the king's courts, are subject to *venal time-serving*,  
or



or the factious spirit of party influence, which is the source of the most dangerous *partiality*; because *partiality* is entirely inconsistent with the high character of *judges*, and must necessarily make shipwreck of their souls!

For a *partial judge* cannot truly be said to “ *have the fear of God before his eyes* :” and, as this is the *first principle* which the common law of England requires, and deems absolutely necessary in all ranks of the community, but more particularly in *judges*, I am bound in Christian charity not to suspect such a *legal incapacity* in any of them, until I am convinced, by experience, to the contrary.

For this reason I have not attempted, by declamation and far-fetched arguments, to establish my opinion; nor do I rely on the interest and number of my friends to make it pass current; neither do I demand favour of my readers, as being a friend to administration; but

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I have

I have founded my opinion merely *on the authority of law*; and, whilst our judges as well as juries are susceptible of that *just and indispensible fear* before mentioned, and are in the least “ *mindful of the solemn account which they themselves must one day give,*” so long shall I presume that our courts are *impartial*; and that they will carefully and conscientiously weigh and determine every case that is laid before them according *to the known laws of the land*; and, consequently, that they would reject, with disdain, the claim of *my supposed adventurer*, if his pretensions to the alienated lands in question had no better foundation than *such a grant* as I have *supposed*. The Courts would inform the litigious adventurer that his grant is of no signification, and cannot convey to him the least right in the alienated lands, because the Crown is bound to prove and establish its own right in all manors, lands, &c. before *it can grant them*

*them to any person whatever ; for both the lord-chancellor and the lord-treasurer (and consequently the commissioners of the treasury) are absolutely restrained, by an act of parliament, (8 Hen. VI. c. 16.\* ) from letting or granting the*

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king's

\* 8 Hen. VI. c. xvi. “ To eschew the dolours,  
 “ grievances, and disherisons, which daily do happen  
 “ to many of the king’s liege-people, by the escheators,  
 “ for that they take enquests, to inquire before them,  
 “ as well by virtue of the king’s writs, as of their offi-  
 “ ces, favourably *and not duly*, by people not impan-  
 “ nelled, nor returned to them by the sheriffs of the  
 “ counties, and more often for their *private gain*, and  
 “ for *the disherison of the king’s liege-people, than for the*  
 “ *profit of the same our lord the king*, and also, for that  
 “ the lands and tenements of many of the king’s liege-  
 “ people be seized into the king’s hands upon such  
 “ enquests, *or let to ferm* by the chancellor or treasurer  
 “ *before such enquests be returned* in the chancery : our lord  
 “ the king hath ordained, &c. that no escheator or com-  
 “ missioner take in any wise *any enquest to enquire*, but of  
 “ people *returned and impanelled by the sheriff* in the  
 “ county, within which he is escheator or commissioner.  
 “ And if any escheator or commissioner take *enquests* of  
 “ people which be not *impanelled*, &c. that he incur the  
 “ penalty of 40l. &c. And that no lands nor tenements,  
 “ seized into the hand of our lord the king, upon such  
 “ enquests taken before the escheators or commissioners,  
 “ be not in any wise *let nor granted to ferm by the chancel-*  
 “ *lor or treasurer of England, or any other the king’s offi-*  
 “ *cer,*

king's lands *to farm*, until *lawful enquests* and *verdicts* (that is from *good towns*, and of *good people*, 36 Ed. III. c. 13; or a *jury of twelve sufficient men*, 1 Hen. VIII. c. 8.) have been taken thereupon, and  
 “ *be fully returned* in the Chancery, or in  
 “ the Exchequer, but all such lands and  
 “ tenements shall entirely and continu-  
 “ ally remain in the hands of our lord the  
 “ king, until the said enquests and ver-  
 “ dicts be returned,” &c. — And, when  
 the persons “ *grieved by the same en-*  
 “ *quests, or putting out of their lands and*  
 “ *tenements*, come into the Chancery,  
 “ and proffer themselves to traverse the  
 “ said enquests, and then offer to take the  
 “ same lands or tenements to farm. And,  
 “ if they so do, that then the same lands,  
 “ &c. be committed to them if they shew  
 “ good evidence, &c.” So that there is  
 no

“ *cer*, until the same enquests and verdicts be fully return-  
 “ ed in the chancery, or in the exchequer, but all such  
 “ lands, &c. shall intirely and continually remain in the  
 “ hands of our lord the king until the said enquests and  
 “ verdicts be returned, &c.” — See also 36 Ed. III. c.  
 13. to which this act refers for the form of letting.



no possibility for the crown to make a valid grant upon the conditions before described, viz. "*the establishing of the Crown's right at the expence of the grantee.*"

And another act was made in the eighteenth year of the same reign, (cap. 6.) expressly as a remedy to prevent such *subtle and designing persons* from suing "to obtain such gifts, and grants, and farms, by the king's letters patents, before any inquisition (as above) or title found for the king of the same, pretending such gifts and grants not comprised and remedied by the said statute, &c. And, if any letters patents be made to the contrary, they shall BE VOID AND HOLDEN FOR NONE." — So that our adventurer's claim, founded on a grant made previous to these necessary steps, is absolutely null and void of itself. And the very conditions of it (viz. that of establishing the right of the crown at the grantee's own expence) would afford substantial proof, without any farther examination, that

that the crown had neglected all these *legal precautions*, which are absolutely necessary for the foundation and existence of every grant: and, consequently, such a condition is, of itself, sufficient to render any grant a *mere nullity*.

I must, likewise, observe that the crown, or its ministers, have no right to grant lands on any other terms or conditions whatsoever, besides those which are prescribed by law “*utterly void and of none effect*,” (says the 1st Stat. of queen Anne, sect. 5.) “*unless such GRANT, LEASE, &c. be made for some term or estate, not exceeding one and thirty years, or three lives, or for some term of years determinable upon one, two, or three, lives; and, unless such grant, &c. be made to commence from the date or making thereof;*” which is impossible in the case that I have supposed, where the right is afterwards to be established by a contest at law.—There are also *other conditions* which are absolutely necessary: a reservation must be made of the

the ancient and most usual rent, or more, or such rent as hath been reserved, yielded, and paid, for the greater part of twenty years, before the making of the grant; or a reserved rent, not under the third part of *the clear yearly value*. And whatever grant is made since the first of queen Anne, otherwise than according to the tenure and meaning of the said act, is *absolutely null and void*. It would be in vain for a *Treasury-board* to alledge, in such a case, that they abated their legal conditions in consideration of the grantee being bound to prosecute and establish, at his own expence, *the right of the crown*: an impartial court (such as I have described) would freely declare that the crown is not empowered to change the above *prescribed conditions*, on any pretence whatsoever, being absolutely *limited* and bound by this Statute of 1st Anne, which declares (sect. 7.) “*that*  
“ *all gifts, grants, &c. of manors, &c.*  
“ *or*

“ or any part thereof, contrary to the pro-  
 “ visions of this act, or any of them, shall  
 “ BE NULL AND VOID, without any inqui-  
 “ sition, scire facias, or other proceeding,  
 “ to determine or make void the same.”

But the most material thing to be con-  
 sidered by a lord chancellor, a lord trea-  
 surer, or a treasury-board, before they  
 presume to reclaim *alienated lands*, &c.  
 is, what I first of all touched upon, viz.  
 whether the present possessors of lands,  
 &c. have enjoyed a *quiet possession of*  
*sixty years?* because that creates a good  
 title; “ FACIT JUS,” as I have already  
 proved; and such great officers ought  
 to be aware that “ *Rescriptum principis*  
 “ *contra jus non valet;*” so that they  
 would betray the honour of their royal  
 master, if they were to endeavour to pro-  
 cure his assent to grants of land, &c.  
 which, by *time and possession*, are thus to-  
 tally and irrecoverably alienated; for “ *Do-*  
 “ *natio principis intelligitur SINE PREJU-*

“ DICIO



" DICIO TERTII." (Davis, 75. 6.) And

" One should be JUST before he is GENE-

" ROUS."

The points of law and opinions, which I have here laid down, may perhaps be capable of perversion; for indeed the *plainest truths* may be wrested and *perverted* by long, sophistical, and deceitful, arguments;—but, let my opponents submit their objections to writing, as I have done, and collate them side by side with mine, and it will be impossible for the most subtle prevarication to set aside so many plain and intelligible laws, which acquire a collective force by being thus produced together: and, even if we could suppose an inclination or partiality in any of the king's justices, to favour and confirm *every act of administration whatsoever*, be it *right or wrong*; and, among the rest, such AN ILLEGAL ACT OF THE TREASURY LORDS as I have here stated in this supposed grant; yet, even the most

E *partial*

partial of them would find themselves exposed to great difficulty, shame, and danger, by attempting to define away the true meaning of so many positive laws, in order to *establish* such an *injustice*: for the private opinions of the king's justices ought to have no weight, neither their will and inclination, except when clearly supported by law; because they are not allowed an arbitrary or wilful discretion,\* but merely a legal discretion, which is "*discernere per legem quod sit justum.*" —

For discretion is a science, or understanding, to discern between *falsety* and *truth*, between *right* and *wrong*, between *shadows* and *substance*, between *equity* and *colourable glosses* and *pretences*; and not to do according to their *wills* and *private affections*; for, as one saith, "*Talis discretio discretionem confundit.*" 5 Co. 345. — If these salutary laws and unalterable

\* Also discretion, as it is well described, is "*scire per legem quid sit justum.*" 10 Co. 140.

alterable maxims have been infringed by any great officer of the present times, through *misinformation*, or for want of duly considering the point in question, let them but acknowledge their error, together with a sincere intention to make what reparation may lie in their power, and they will easily regain that public confidence and esteem which they have forfeited by their mistakes; for, sure I am, (with sir Edw. Cook,) “that no wise or true-hearted *Englishman*, that hath been *persuaded* before he was *instructed*, will refuse to be *instructed* in the truth, (which he may see with his own eyes,) lest he should be *dissuaded* from error, wherewith blindfold he hath been deceived; for *miserable is his case*, and *worthy of pity*, that hath been *PERSUADED* before he was *INSTRUCTED*, and now will refuse to be *INSTRUCTED* because he will not be *PERSUADED*.”

But, howsoever applicable the latter part

of this quotation may be to any of his majesty's *late* or *present ministers*, yet am I thoroughly persuaded that it will never be *justly* said of himself.

As a man, he is indeed liable to be imposed on, and may perhaps be *persuaded* to give his assent to some improper things, through the insinuation of mere *worldly politicians*; that the same are absolutely NECESSARY; and that he must submit to tread in the beaten tract of *state-policy* (howsoever *corrupt*) to avoid the danger of greater evils.||

If he ever has yielded to such *fallacious* and *dangerous doctrines*, (for no doctrines are so productive of *violence* and *iniquity*, and

|| The NECESSITY of doing *evil* to avoid a greater *evil* is a doctrine too generally adopted by *worldly politicians*, and perfectly accords with the ancient *iniquitous* proposition, “*Let us do EVIL, that GOOD may come.*” But the unhappy state of those wretched politicians, who give such pernicious counsel, is immediately added, — *whose damnation is just!* Rom. iii. 8.



and consequently so productive of certain ruin \* to states and kingdoms, as those which are built on pretended necessity,) I am persuaded it was for want of conviction that he might safely and with propriety avoid it, but the rectitude of his intentions, I am convinced, will never justly be called in question.

That he is a good christian, and sincerely wishes to promote the general good of his people, I have not the least doubt; and therefore if any man hath been injured by such an illegal grant as I have described, let him find some means of stating the merits of his case in a proper and respectful manner to our gracious sovereign, and I will FORFEIT MY LIFE, if he does not find redress. — MY CONFIDENCE || is

\* “ Our INIQUITIES, like the wind, have taken us away.” Isaiah lxiv. 6. “ Woe unto them that decree unrighteous decrees.” Isaiah x. 1.

|| N. B. This tract is dated in May, 1771.

is not without foundation! I had the honour to stand in his royal presence, when he called *God and man* to witness, in the most solemn and affecting manner that can be described, that he would *rule according to the laws*.

From that time to this I have entertained the highest personal esteem and respect for him, and have really more hopes of the re-establishment of public peace and content, from the *sincerity and good heart* (as I conceive) of *that one man*, than from the most earnest endeavours of all the other honest and loyal people of England, who, of themselves, without their royal master at their head, are by far too few and weak to resist the immense tide of *venality and corruption*, which has almost totally overflowed this once happy island. ——— “ *Take away the wicked*  
“ *from before the king, and his throne shall*  
“ *be*

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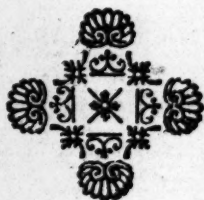
*" be established in righteousness."* Prov.

xxv. 5.

(Signed)

GRANVILLE SHARP.

T H E E N D.



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"to be classified in right hand of the page."

REV. 3.

(Signed)

GRANT LEE SHARP.

THE END.

